

# **BALTIMORE CITY COMPREHENSIVE REZONING PROJECT**

## **POSITION PAPER**

### **ZONING FOR NIGHTLIFE AND LIVE ENTERTAINMENT**

*2-26-04*

#### **SUMMARY**

Regulation of live entertainment and nightlife has long been a contentious issue in Baltimore City. Establishment owners and economic development officials see the entertainment and economic benefits of nightlife, while neighborhoods are often wary of live entertainment, due in part to serious issues created by problem businesses. Enforcement of zoning regulations has been hampered by the lack of Code definitions for many live entertainment venues and the lack of specificity regarding the types of conditions that can be imposed to control problems.

Building on the work done by the Night Life Task Forces convened by Council President Sheila Dixon and Councilwoman Stephanie Rawlings Blake, proposed zoning revisions are intended to further the economic development goals of the City while safeguarding the concerns of neighborhood residents. Specific objectives are to:

- Reconcile the conflicting zoning interests of nightlife/live entertainment venues and neighboring residents and businesses.
- Provide zoning options for various levels and types of nightlife and live entertainment.
- Increase the City's ability to tailor the type of nightlife/live entertainment to the type of neighborhood.

Two phases of zoning revisions are recommended. Phase One, the subject of the currently proposed bill, will:

- Provide definitions for live entertainment uses listed in the Zoning Code but currently undefined, including restaurant, tavern, banquet hall, live entertainment, etc.
- Specify conditions for live entertainment when it is a conditional use.
- Apply the new definitions immediately, except that restaurants will have 3 years to comply with the new restaurant definition.
- Apply Zoning Code rules of non-conformance to all lawfully established live entertainment venues.

Following a testing period, Phase Two will differentiate between small and large restaurants and taverns, consider adding additional new live entertainment uses, and

revisit the types of zones in which live entertainment uses may be allowed. One goal would be to define a type of small establishment that may be more acceptable in a neighborhood setting.

Although not part of the purview of comprehensive rezoning, it is also recommended that the City consider annual licensing of live entertainment venues, as a way of better controlling operation on a continuing basis.

The recommendations on zoning for live entertainment and nightlife have been reviewed at a public meeting at the Planning Department on January 14, 2003 and were presented to the City Council at a luncheon meeting on November 25, 2002. Previous to that they were discussed at two focus group meetings: one of city staff members concerned with the issue and the second of stakeholders from the public at large.

## **ZONING FOR NIGHTLIFE AND LIVE ENTERTAINMENT**

### **ISSUE/PROBLEM TO BE RESOLVED**

In a number of Baltimore City communities, establishments that feature live entertainment and dancing are viewed negatively by neighboring residents and businesses. Problems include parking, noise, littering, vandalism, violence and other disruptive and/or criminal behavior on the part of patrons, particularly late at night. Owners of many taverns, restaurants and other establishments featuring live entertainment, on the other hand, believe that existing zoning is too restrictive. The City's planning, commercial revitalization and economic development officials see the economic development potentials of live entertainment and would like to identify a compromise that would allow some liberalization of existing zoning and a wider variety of options for nightlife, while assuring that problem establishments and operators can be better controlled.

Research for this issue included review of the work of the Night Life Task Forces chaired by City Council President Sheila Dixon in 2000, and City Councilwoman Stephanie Rawlings Blake in 1997, reports prepared by the Planning Department on the issue, American Planning Association publications, zoning regulations of other jurisdictions in Maryland and in other cities across the country, the Rules and Regulation for the Board of Liquor License Commissioners for Baltimore City, and Article 2B of the Code of Public General Laws of Maryland (Alcoholic Beverages); interviews with various stakeholders; and the results of the session on live entertainment held at the Baltimore Zoning Reform Conference held in October, 2001. The Comprehensive Rezoning Project is currently conducting a survey of existing Liquor Board licenses to help determine important parameters for definitions of restaurants and taverns.

### **EXISTING ZONING**

The present Baltimore City Zoning Code allows live entertainment and dancing in taverns, restaurants and lunchrooms in certain zones, as follows:

	<u>Permitted</u>	<u>Conditional to the BMZA</u>
Zones	B-2 (limited)*, B-3, B-4, B-5	M-2, M-3**

\*In B-2 zones, live entertainment and dancing are permitted in restaurants or taverns that were operating with live entertainment or dancing as an accessory use on April 20, 1971. In these establishments the use may continue and is not considered non-conforming (13-606).

**\*\*** In M-2 and M-3, to be eligible as a conditional use, a restaurant or tavern with live entertainment must be located at least 500 feet from a residence district (7-307).

Live entertainment is also allowed as an accessory use in such establishments as meeting and banquet halls, auditoria, concert halls, dance halls, etc. Live entertainment and dancing may also occur in after-hours clubs, defined by the zoning code as certain establishments that remain open after 2 a.m., including restaurants providing live entertainment, banquet halls, dance halls, meeting halls, private clubs or lodges, or similar places.

The Zoning Code does not define live entertainment, nor does it provide definitions for a number of the venues where live entertainment may occur, including restaurant, tavern, dance hall, meeting hall, banquet hall, concert hall, auditorium, etc. Where live entertainment is a conditional use, the code does not specify any special conditions to be considered for approval.

## **SUMMARY OF PROPOSED ZONING CHANGES AND RATIONALE**

The history of zoning for live entertainment and nightlife in Baltimore City has been fraught with difficulty and misunderstanding. The lack of definitions is an important contributing factor, and it is recommended that the first step in solving these problems be to provide definitions for live entertainment and for the venues in which it is allowed. This will help to eliminate such problems as live entertainment at establishments permitted as restaurants but serving primarily alcohol, banquet halls that operate as taverns with live entertainment, etc. Owners and managers of establishments will know from the outset what is allowed in the venue for which they apply; reviewing bodies and neighborhood groups will have a better sense of what type of establishments are being contemplated. Establishing clear definitions will also reduce City staff time devoted to the review of applications, and will help in enforcing the regulations once establishments are in operation.

A two-phase process of zoning revision is proposed. In addition to providing definitions, the first phase should include adding a section to the Code to specify the types of conditions that may be imposed when live entertainment is a conditional use. This will allow the BMZA to review such potential problem areas as hours of operation, parking, noise level, and security, and to tailor a solution that is specific to the issues of the property, the establishment and the neighborhood. Strict attention to better regulation of these conditions can greatly assist in alleviating a number of the problems now associated with live entertainment.

In the second phase, as comprehensive rezoning progresses, the lists of uses allowed in various zones will be reviewed and changes in allowable uses may be made to accommodate the planning goals of various communities. At that time, new uses can be created as needed. Providing definitions for the current uses now will help to correct

existing problems, and will allow a testing period before full comprehensive rezoning recommendations are made.

A third area of change is also recommended. Live entertainment venues in the City should be licensed, by a licensing board that would be responsible for both approving a proposed operation and monitoring it once it was approved. Zoning determines whether a use is appropriate for a particular site, and once established, the use is ordinarily permanent. Zoning has very limited ability to monitor the operation of a business; and operation is the source of the majority of complaints regarding live entertainment. Creation of a licensing board is beyond the purview of the comprehensive rezoning project, yet research into live entertainment has strongly suggested that licensing would be very helpful in controlling the negative aspects of live entertainment and improving the opportunities for healthy nightlife in Baltimore City.

## **PHASE ONE: DEFINITIONS AND SPECIAL CONDITIONS**

### **Definitions for Existing Uses**

Definitions are proposed for the uses listed below. All are already listed in the zoning code. None except after-hours establishment is currently defined. Additions to the code are indicated as follows: ADDITION;(deletion).

RESTAURANT MEANS A BUSINESS ESTABLISHMENT WHERE FOOD AND DRINKS ARE SERVED TO THE PUBLIC, PRIMARILY FOR ON-PREMISES CONSUMPTION BY PATRONS SEATED AT TABLES. IN RESTAURANTS THAT SERVE ALCOHOLIC BEVERAGES:

- (1) A FULL MENU OF FOOD AND DRINKS IS PREPARED PRIMARILY ON PREMISES IN A FULLY EQUIPPED KITCHEN CAPABLE OF PREPARING FOOD FOR THE RATED SEATING CAPACITY;
- (2) ANNUALLY, AVERAGE DAILY RECEIPTS FROM THE SALE OF FOOD EXCEED 50% OF THE ESTABLISHMENT'S TOTAL AVERAGE DAILY RECEIPTS, NOT INCLUDING SALES OF NOVELTY ITEMS, INCOME FROM VENDING MACHINES, COVER CHARGES, OR OTHER RECEIPTS NOT DERIVED FROM THE SALE OF FOOD OR BEVERAGES.<sup>1</sup>

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<sup>1</sup> State liquor laws, Article 2B of Public General Laws of Maryland, require differing percentages of food for the various jurisdictions in the state. In most jurisdictions, restaurants are required to exceed 50% food (Article 2B, 1-102). Article 2B requires no less than 40 percent food for restaurants in Baltimore City. In a number of areas in the City, this percentage is increased to 51%, including in Fells Point, Canton, and Federal Hill. About a third of the restaurants in the City are located in these areas. The Comprehensive Rezoning Project prepared a survey of Baltimore City restaurants with liquor licenses, using 2002-2003 license records provided by the Board of Liquor License Commissioners for Baltimore City. It was determined that 83 percent of all restaurants in the City with liquor licenses currently have 51% or greater average annual daily receipts from the sale of food. Seven percent had between 46 and 50% food, and an additional seven percent had 40-45% food. Three percent reported less than 40%.

THE TERM RESTAURANT INCLUDES CAFETERIA. A RESTAURANT IS NOT A TAVERN

RESTAURANT-INCLUDING LIVE ENTERTAINMENT OR DANCING MEANS A RESTAURANT AT WHICH LIVE ENTERTAINMENT OR DANCING, OR BOTH MAY BE PROVIDED AS AN ACCESSORY USE. LIVE ENTERTAINMENT OR DANCING MAY OCCUR ONLY WHILE THE KITCHEN IS OPEN, AS AN ENHANCEMENT TO THE FOOD SERVICE EXPERIENCE.

CARRY-OUT SHOP MEANS A BUSINESS ESTABLISHMENT WHOSE PRINCIPAL BUSINESS IS THE SALE OF READY-TO-CONSUME FOOD AND BEVERAGES FOR OFF-PREMISES CONSUMPTION.

TAVERN MEANS A BUSINESS ESTABLISHMENT THAT IS DEVOTED PRIMARILY TO SERVING ALCOHOLIC BEVERAGES TO THE PUBLIC FOR ON-PREMISES CONSUMPTION. FOOD MAY ALSO BE SERVED.

TAVERN-INCLUDING LIVE ENTERTAINMENT OR DANCING MEANS A TAVERN AT WHICH LIVE ENTERTAINMENT OR DANCING, OR BOTH MAY BE PROVIDED AS AN ACCESSORY USE.

OUTDOOR TABLE SERVICE ACCESSORY TO A RESTAURANT MEANS OUTDOOR TABLE SERVICE WHERE ALL PATRONS ARE SEATED AT TABLES FOR SERVICE OF FOOD AND DRINKS.

LIVE ENTERTAINMENT MEANS ANY PERFORMANCE, MUSICAL ACT (INCLUDING KARAOKE<sup>2</sup>), THEATRICAL ACT (INCLUDING STAND-UP COMEDY), PLAY, REVUE, DANCE ACT, SONG AND DANCE ACT, DISC JOCKEY, OR ANY COMBINATION OF THESE, OR SIMILAR ACTIVITY PERFORMED LIVE BY ONE OR MORE PERSONS, WHETHER OR NOT DONE FOR COMPENSATION, AND WHETHER OR NOT ADMISSION IS CHARGED. LIVE ENTERTAINMENT DOES NOT INCLUDE ADULT ENTERTAINMENT.

BANQUET HALL MEANS AN ESTABLISHMENT USED REGULARLY FOR SERVING FOOD AND BEVERAGES TO GROUPS THAT, BEFORE THE DAY OF THE EVENT, HAVE RESERVED THE FACILITY FOR BANQUETS OR MEETINGS. THE GENERAL PUBLIC IS NOT ADMITTED, AND THERE IS NO

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<sup>2</sup> There have been instances in the past where, under an informal administrative agreement, karaoke was not disallowed in establishments located in zones where live entertainment was not normally allowed, with the proviso that the karaoke operator did not entertain. It is recommended that in these establishments, karaoke be allowed to continue as if it were an existing non-conforming use, with the understanding that this allowance would not include any live entertainment use other than karaoke. This intention should be recorded in a memorandum signed by the zoning administrator. In all other cases, karaoke should be considered live entertainment and allowed only in zones where live entertainment is allowed.

ADMISSION CHARGE AT THE DOOR. LIVE ENTERTAINMENT MAY BE FEATURED AS ACCESSORY TO THE MEETING OR BANQUET USE. A BANQUET HALL IS NOT A RESTAURANT OR A TAVERN.

CATERING ESTABLISHMENT MEANS A BUSINESS ESTABLISHMENT WHOSE PRINCIPAL BUSINESS IS PREPARATION OF FOOD AND BEVERAGES FOR OFF-PREMISES CONSUMPTION ONLY.

AUDITORIUM MEANS AN ESTABLISHMENT DESIGNED OR USED FOR THE GATHERING OF PEOPLE SEATED AS AN AUDIENCE, OPEN TO THE GENERAL PUBLIC, WITH OR WITHOUT AN ADMISSION CHARGE, AND USED PRIMARILY FOR PUBLIC SPEAKING AND LIVE ENTERTAINMENT.

AFTER-HOURS ESTABLISHMENT means any (banquet hall, dance hall, meeting hall, private club or lodge, or similar place) OF THE FOLLOWING that remains open after 2 a.m. on any day: 1. A BANQUET HALL, DANCE HALL, PRIVATE CLUB OR LODGE, OR SIMILAR PLACE; OR 2. a restaurant that provides live entertainment or dancing (and remains open after 2 a.m. on any day).

Note:

Changes in the after-hours definition are not substantive, and are made only for clarity.

Regarding restaurants and banquet halls, the current terms in the zoning use lists are *restaurants and lunchrooms*, and *meeting and banquet halls*. These have been changed to *restaurants* and *banquet halls*, as simpler and more representative of contemporary use. Meeting hall is also deleted from the after-hours definition.

Definitions for dance hall and concert hall have not been included in the above. Both are existing use categories that are recommended for deletion from the code in Phase Two, when the lists of uses allowed in the various zones are reviewed and updated.

### **Time Period for Compliance**

It is recommended that the above definitions apply upon passage of the amending legislation, with the following caveats:

1. Restaurants serving alcohol would be given three years to comply with the new restaurant definition, with the time clock beginning when the amendment is enacted.
2. Live entertainment and dancing in all lawfully established restaurants and taverns would be subject to the rules of non-conformance. The current Zoning Code makes an exception of restaurants and taverns that were operating with live entertainment or dancing as an accessory use on April 20, 1971, when the current

Code was adopted, allowing them to continue and not be considered non-conforming (section 13-606). It is proposed that these establishments now be treated in the same manner as all other restaurants and taverns with live entertainment or dancing.

### **Special Conditions for Live Entertainment**

Where a restaurant or tavern featuring live entertainment is a conditional use, and for all after-hours clubs, it is recommended that the BMZA be empowered to review and impose conditions as appropriate concerning the following:

- Days and hours of operation
- Use of amplification, noise levels and need for noise proofing
- Limits on the size of the establishment, or on the size, location, or configuration of the entertainment or dancing venue within the establishment
- Number of live entertainers
- Number of seats proposed for outdoor table service
- Exterior lighting
- Whether to limit the accessory use to live entertainment only or dancing only
- The establishment and maintenance of a traffic and parking management plan and an indoor and outdoor security plan
- For after-hours establishments only: No after-hours establishment can be entered directly from a tavern

The above should be added to the code under *Title 14, Conditional Uses, Subtitle 3, Additional Considerations for Certain Uses*.

When live entertainment uses are considered for conditional use approval, Police Department comment should be solicited as appropriate concerning exterior lighting, traffic/parking management, security, etc.

## **PHASE TWO: NEW USES AND REVIEW OF USE LISTS**

### **Add/Delete Uses**

It is recommended that dance hall and concert hall be deleted as part of Phase Two, for the following reasons:

- Regarding dance halls, there have been problems and misunderstandings concerning the operation of several establishments that describe themselves as dance halls, and it is recommended that these businesses would be better understood if defined as taverns with live entertainment or dancing. As part of this change, reference to dance halls should be deleted from the list of uses in which an after-hours establishment may be located.



- Regarding concert halls, when the zoning code was adopted in 1971, activities in auditoriums and concert halls were relatively similar in nature and they were allowed in similar districts. Since that time, the term “concert” has come to mean rock concert, a use that is held in various venues including concert halls, but also in taverns as live entertainment, or in meeting and banquet halls as an accessory use.

The following new uses should be considered as additions to the Code:

- *Small and large taverns and restaurants:* Making a distinction between small and large taverns and small and large restaurants will help in tailoring the size of the establishment to neighborhood conditions. Large capacity establishments are more likely to have a negative impact and can be restricted to certain areas. The Comprehensive Rezoning Project is currently preparing a survey of Liquor Board records to determine the range in capacity of existing restaurants and taverns, as an input to the definition of small and large establishment for zoning purposes.

Recommended definitions are as follows:

Small Tavern means a business establishment devoted primarily to serving alcoholic beverages to the public for on-premises consumption. Food may also be served. Capacity shall be \_\_\_\_ (to be determined<sup>3</sup>) persons or fewer, per valid capacity rating from the Baltimore City Fire Department.

Large Tavern means a business establishment devoted primarily to serving alcoholic beverages to the public for on-premises consumption. Food may also be served. Capacity shall be more than \_\_\_\_ (to be determined<sup>4</sup>) persons, per valid capacity rating from the Baltimore City Fire Department.

Small Restaurant means a business establishment where food and drinks are served to the public, primarily for on premises consumption by patrons seated at tables. In restaurants that serve alcoholic beverages:

- (1) A full menu of food and drinks is prepared primarily on premises in a fully equipped kitchen capable of preparing food for the rated seating capacity;
- (2) annually, average daily receipts from the sale of food exceed 50% of the establishment’s total average daily receipts, not including sales of novelty items, income from vending machines, cover charges, or other receipts not derived from the sale of food or beverages.

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<sup>3</sup> The results of the survey of Liquor Board records currently being conducted by the Comprehensive Rezoning Project will be an input to this determination.

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Capacity shall be \_\_\_\_ (to be determined<sup>5</sup>) persons or fewer, per valid capacity rating from the Baltimore City Fire Department. The term restaurant includes cafeteria. A restaurant is not a tavern.

Large Restaurant means a business establishment where food and drinks are served to the public, primarily for on premises consumption by patrons seated at tables. In restaurants that serve alcoholic beverages:

- (1) A full menu of food and drinks is prepared primarily on premises in a fully equipped kitchen capable of preparing food for the rated seating capacity;
- (2) annually, average daily receipts from the sale of food exceed 50% of the establishment's total average daily receipts, not including sales of novelty items, income from vending machines, cover charges, or other receipts not derived from the sale of food or beverages.

Capacity shall be \_\_\_\_ (to be determined<sup>6</sup>) persons or fewer, per valid capacity rating from the Baltimore City Fire Department. The term restaurant includes cafeteria. A restaurant is not a tavern.

- ***Outdoor table service accessory to a tavern:*** In certain limited areas of the city, it may be possible to allow this as a conditional use, thereby increasing the options for nightlife in the community. If warranted, a definition will be developed following additional discussion.

Outdoor table service accessory to a tavern means outdoor table service, not including an outdoor bar or outdoor live entertainment. All patrons must be seated for service.

- ***Outdoor live entertainment accessory to a restaurant or a tavern:*** As with outdoor table service, it may be possible to allow this as a conditional use in certain limited areas of the city, increasing the options for nightlife in the community.
- ***Outdoor restaurant/outdoor tavern:*** Currently, in business zones, most uses must be within enclosed structures, and outdoor table service is considered only as an accessory use. It may be advantageous to add to the city's nightlife options, by considering a category where restaurant or tavern use may be held principally outside or in a structure that is not fully enclosed. It is assumed that this would be allowed in very limited areas of the city and that these would be conditional uses. The definition of outdoor restaurant/outdoor tavern is to be determined. There are

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<sup>5</sup> The results of the survey of Liquor Board records currently being conducted by the Comprehensive Rezoning Project will be an input to this determination.

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many questions about the advisability of these uses and the form that they might take. A definition will be developed following additional discussion.

- ***Non-alcoholic club:*** This will allow appropriate siting for establishments that may feature live entertainment, but that do not serve alcohol. One type of non-alcoholic club may be those establishments now categorized as after-hour establishments<sup>7</sup>. To provide appropriate oversight, any establishment staying open after 2 a.m. should be allowed only as a conditional use. The proposed definition is:

Non-alcoholic club means an establishment where food and non-alcoholic beverages may be served, and live entertainment or dancing may be featured. The establishment does not have a liquor license and no alcohol is served or consumed on the premises. The establishment is physically separate from any establishment that serves alcoholic beverages, including having a separate entrance.

The following questions should also be given consideration:

- Can/should different types and levels of live entertainment be defined? One possibility is a form of limited live entertainment that would not include amplification.
- Should live entertainment at venues such as bookstores, art galleries, CD and record stores, etc., be regulated as a principal rather than an accessory use?
- Is performance art adequately covered under the zoning code?
- Should the existing theater use category be divided into two categories: live theater and movie theater? Regarding movie theater, it may be useful to distinguish between small (1-2 screens) and multi-screen theaters, particularly regarding parking requirements.
- If banquet halls are made conditional to the BMZA in any districts, should banquet hall be added to the restaurant and tavern uses with live entertainment that are subject to specified special conditions?
- Should the name tavern be changed to bar, as a more commonly used term? Should tavern with live entertainment and dancing be changed to nightclub for the same reason?

Other new definitions or conditions may be proposed depending on the progress of Phase One definitions in controlling problems.

## **Review Lists of Uses**

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<sup>7</sup> A recently enacted provision of the State liquor law (Article 2B, 11-304 (d) (3) (i)) allows restaurants in Baltimore City with Class B liquor licenses to remain open after the 2 a.m. closing time for food service only. Dancing or entertainment are no longer permitted after hours in these establishments.

The full comprehensive rezoning project will include review of the lists of uses in all zoning districts, including live entertainment uses. The review should also include recommendations regarding any changes in permitted vs. conditional uses, whether conditional uses should be reviewed by the BMZA or the City Council, and the extent to which existing non-conforming uses would be grandfathered. The success of the new nightlife definitions will provide input into this process, and it may be possible to define a type of live entertainment that would be acceptable in additional zones.

## **LICENSING OF LIVE ENTERTAINMENT**

While not within the purview of the comprehensive rezoning project, annual licensing of live entertainment uses is recommended. For many live entertainment uses, zoning permission is now the only control short of police action after problems have occurred. Problem establishments have made many neighborhoods wary of live entertainment in general, and have retarded the city's ability to make progress toward creating a healthy and more varied nightlife.

Annual licensing would provide periodic monitoring and a method of penalizing problem operations. Licensing would help to assure continued compliance with the conditions imposed through zoning, and a licensing board would provide an agency that community groups and others could contact with problems. Unlike the right to use land conferred through zoning, a license can be revoked for cause, providing an important control. The expenses of a licensing board could be recouped through licensing fees.